



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,016	12/04/2001	Kenneth Martin Levin	6535/53651	8264

30505 7590 10/03/2003

MARK J. SPOLYAR  
38 FOUNTAIN ST.  
SAN FRANCISCO, CA 94114

EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/03/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,016

Applicant(s)

LEVIN, KENNETH MARTIN

Examiner

Kim M. Lewis

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2001 and 06 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Action*.

**DETAILED ACTION*****Information Disclosure Statement***

The information disclosure statements filed 12/04/01 and 5/6/02 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 3761

Claims 1, 2, 7, 11, 14 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,181,905 ("Flam").

As regards claims 1 and 2, Flam discloses an adhesive bandage for monitoring the condition of a wound. As can be seen from fig. 5, the bandage (31) comprises a backing film (34), an adhesive layer (32) and a dressing in the form of a layer of polymeric foam (33). Flam also discloses tape (11), which is adhered to the top surface of backing (34). The tape as shown in fig. 1, discloses markings in the form of text, which indicate care instructions for a wound (col. 4, lines 56-62).

As regards the backing being flexible, it is inherent in the disclosure that the backing is flexible given the environment in which the bandage is used. Assuming *arguendo* that the applicant contends that the backing is not flexible, the examiner contends that one having ordinary skill in the art would have found it obvious to provide the bandage of Flam with a flexible backing in order to contour the skin of the user.

As regards claim 7, the tape includes boxes made of lines, which is capable of receiving additional text or other wound care indicia.

As regards claim 11, as can be read from col. 3, lines 22-68, the boxes change colors when a certain temperature is reached. By monitoring the temperature of a wound (*i.e.*, the color of the boxes, the health care professional is able to administer appropriate treatment, (col. 4, lines 54-62).

As regards claim 14, the tape can be considered an adhesive label.

Art Unit: 3761

As regards claim 15, it can be seen from Fig. 5 that the adhesive covers the adhesive covers substantially the entire adhesive-faced side of the backing film.

Claims 3-6, 8-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flam.

As regards claims 3-6, 8-10 and 13, Flam fails to teach the markings indicate the day the bandage was applied, the day the bandage should be changed, proscriptive care instructions, where additional text or indicia should be added to the bandage, that the care instructions reference a wound protocol, that the color is associated with a particular day of the week and wherein the adhesive bandage was applied on that day of the week and that the color is associated with a particular day of the week and wherein the adhesive bandage should be changed on that day of the week.

Flam has already established that certain color markings represent a certain temperature range, which translates to administering a certain treatment. The examiner contends that it then follows that one having ordinary skill in the art would find it an obvious design choice to modify the tape of Flam to include indicia of any kind including text, markings, colors, etc., which represents or indicates various activities, days, protocols, etc.

Art Unit: 3761

***Allowable Subject Matter***

Claims 16-21 are allowed.

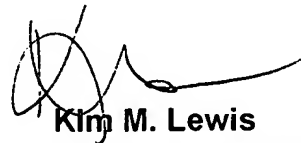
***Conclusion***

The prior art made of record and not relied upon shows the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

  
**Kim M. Lewis  
Primary Examiner  
Art Unit 3761**

kml  
September 26, 2003